

HIGH-TENACITY RAYON FILAMENT YARN FROM GERMANY AND THE NETHERLANDS

**Determinations of the Commission in
Investigations Nos. 731-TA-530 and 531
(Preliminary) Under the Tariff Act
of 1930, Together With the
Information Obtained in
the Investigations**



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Washington, DC 20436**

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-530 and 531 (Preliminary)

HIGH-TENACITY RAYON FILAMENT YARN FROM GERMANY AND THE NETHERLANDS

Determinations

On the basis of the record¹ developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Germany and the Netherlands of high-tenacity rayon filament yarn,² provided for in subheading 5403.10.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 6, 1991, a petition was filed with the Commission and the Department of Commerce by North American Rayon Corp., Elizabethton, TN, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of high-tenacity rayon filament yarn from Germany and the Netherlands. Accordingly, effective September 6, 1991, the Commission instituted antidumping investigations Nos. 731-TA-530 and 531 (Preliminary).

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

² For purposes of these investigations, high-tenacity rayon filament yarn is defined as multifilament single yarn of viscose rayon with twist of 5 turns or more per meter, having a denier of 1100 or greater and a tenacity greater than 35 centinewtons per tex.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 13, 1991 (56 F.R. 46643). The conference was held in Washington, DC, on September 27, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

On the basis of the information obtained in these preliminary investigations, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of high-tenacity rayon filament yarn from Germany and the Netherlands that are subject to investigation.

Section 733(a) of the Tariff Act of 1930, 19 U.S.C. § 1673b(a), requires us to decide, based on the best information available at the time of our preliminary determination, whether there is a reasonable indication of material injury or threat of material injury to a domestic industry by reason of imports alleged to be sold at LTFV.

We may weigh the evidence, but may not make a negative determination unless "(1) the record as a whole contains clear and convincing evidence that there is no material injury, threat of material injury, or material retardation; and (2) no likelihood exists that contrary evidence will arise in a final investigation." American Lamb v. United States, 785 F.2d 994 (Fed. Cir. 1986).¹

I. Like Product and Domestic Industry

In these, as in other Title VII investigations, we begin by deciding what the "like product" and "domestic industry" are. The domestic industry is "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . .".² Section 771(10) of the Tariff Act of 1930 defines the "like product" as "[a] product which is like,

¹ 785 F. 2d at 1001-04 (Fed. Cir. 1986).

² 19 § U.S.C. 1677(4)(a).

or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . ."³

While Commerce defines which articles are within the class of merchandise allegedly subsidized or sold at less than fair value, the Commission determines what domestic products are "like" the products defined in the Commerce notice.⁴ The article subject to investigation is high-tenacity rayon filament yarn from Germany and the Netherlands. In its notice of initiation, Commerce defined industrial rayon filament yarn as a high-tenacity rayon filament yarn, which is "multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex."⁵

Rayon is an artificial fiber composed of regenerated cellulose, or wood pulp. Currently, all rayon yarn production in the United States is by the viscose method. In this method, specially processed wood pulp is chemically treated to produce a liquid called viscose. This liquid is aged and filtered, and then extruded and solidified in a process referred to as "wet spinning". After the "wet spinning" step, the filament is drawn by passing around a series of wheels and a series of baths. After the drawing process, a spin finish is applied to the yarn and twist is added.⁶

³ 19 § U.S.C. 1677(10).

⁴ Algoma Steel Corp., Ltd v. U.S., 688 F. Supp. 639 (June 8, 1988), aff'd. 865 F.2d 240 (Fed. Cir. 1989).

⁵ 56 Fed. Reg. 49879 (October 2, 1991).

⁶ Report at A-6-7.

Rayon can be made into either filament or staple fiber yarn.⁷ The tenacity, or breaking strength, of rayon yarn is expressed as a ratio of breaking point to thickness. A higher tenacity corresponds to a stronger yarn. Tenacity is determined both by the yarn's chemical composition and the way it is made. There are three commonly recognized tenacity ranges for rayon filament yarns: normal or regular, medium, and high. Staple fiber, and regular- and medium-tenacity filament yarns are called textile yarns because they are used primarily in fabrics.⁸ ⁹ High-tenacity yarn is normally called industrial yarn because it is used primarily to reinforce tires, hoses and belts.¹⁰

Different types of rayon yarn require different production processes and raw materials. Production equipment can theoretically be used for all types of yarn, up to the point where the viscose is extruded.¹¹ However, textile yarn cannot be drawn on the same equipment as industrial yarn.¹²

Petitioner has asserted that our definition of the like product should be the same as the Commerce Department's definition of the class of merchandise that is allegedly being dumped. The respondents do not

⁷ A filament is a continuous strand of fiber. Filament yarns consist of multiple filaments twisted together. Staple fiber yarn is made up of a bundle of fibers that have been cut to specific lengths, usually 1 to 3 inches depending on the end use. Staple fiber yarn is spun in much the same way that cotton is spun. Report at A-4.

⁸ In addition, petitioner produces a carbonized rayon yarn used as a heat dissipating material on spacecraft and missiles. Petitioner is the only U.S.-Government authorized supplier of carbonized yarn, and provides this product exclusively to the National Aeronautics and Space Administration and the U.S. Department of Defense. Report at A-6.

⁹ Report at A-6.

¹⁰ Report at A-5-6..

¹¹ Report at A-6.

¹² Report at A-7.

disagree,¹³ but this does not preclude us from considering a different definition.

We have therefore independently considered whether other types of rayon yarn should be included in the definition of the like product.¹⁴ The physical characteristics and end uses of industrial and textile yarn are different. Industrial rayon yarn is used primarily to reinforce tires, hoses and belts.¹⁵

Textile yarn is used primarily to make fabric. While all rayon may be produced at the same facilities, the materials used and the production processes are different and not easily switched. We therefore find the like product to be industrial rayon yarn as defined by petitioner and the Department of Commerce. The domestic industry is therefore petitioner North American Rayon Corporation, which is the like product's sole current U.S. manufacturer.

II. Condition of the Industry

In assessing the condition of the industry, we consider, among other factors, production, shipments, capacity, capacity utilization, inventories, employment, wages, financial performance, capital investments and research and development expenditures. No single factor is dispositive, and in each investigation we consider the particular nature of the industry involved and

¹³ Respondent's post-conference brief at 5.

¹⁴ We have also considered whether common alternatives for high-tenacity rayon filament yarn should be included in the like product. These include nylon, polyester, polyvinylalcohol (PVA), and aramid fibers. However, none of these other materials can be used in all of the ways high-tenacity rayon filament yarn is. Moreover, the time and cost of switching from industrial rayon to one of these alternatives, or vice versa, is not trivial, because buyers usually require their suppliers to undergo a qualification process. Available prices for these alternatives differ substantially from that of industrial rayon, and none of these can be made on the same production lines as industrial rayon. Report at A-9-10. Because of these differences, we do not include these alternatives in the like product.

¹⁵ Report at A-5-6.

the relevant economic factors that have a bearing on the state of the industry.¹⁶ Before describing the condition of the industry, we note that because the information regarding the domestic industry relates to one producer, much of the information on which we base our decision is business proprietary, and our discussion of the condition of the industry must necessarily be general in nature.

Apparent domestic consumption of industrial rayon decreased in both quantity and value during the period of investigation.¹⁷ Production and capacity increased from 1988 to 1989,¹⁸ as petitioner filled a portion of the void in the marketplace left by the abrupt departure of the only other U.S. producer, Avtex Fibers, Inc.¹⁹ However, capacity and production then declined significantly from 1989 to 1990. Production continued to fall in the interim period. The trends in quantity and value of U.S. producer's shipments are similar to that for production--increasing from 1988 to 1989 and decreasing significantly thereafter.²⁰ Employment trends also paralleled the trends in production of industrial rayon filament yarn.²¹ The number of production workers, hours worked, wages paid, and total compensation paid all increased

¹⁶ See 19 U.S.C. § 1677(7)(V)(iii), which requires us to consider the condition of the industry in the context of the business cycle and conditions of competition that are distinctive to the domestic industry. See also H.R. Rep. 317, 96th Cong., 1st Sess. at 46; S. Rep. 249, 96th Cong., 1st Sess. at 88.

¹⁷ Report at A-16.

¹⁸ Report at A-19.

¹⁹ Avtex Fibers, Inc. produced high-tenacity rayon filament yarn at its plant in Front Royal, VA until it was closed by the State of Virginia in October 1988 after failing to meet pollution-control standards. The plant subsequently reopened from December 1988 to November 1989, but did not resume its high-tenacity rayon production. Avtex filed for protection under Chapter 11 of the U.S. Bankruptcy Code in February 1990. Report at A-15-16.

²⁰ Report at A-19.

²¹ Report at A-20.

from 1988 to 1989, and decreased thereafter.²² Capital expenditures and research and development expenditures fluctuated throughout the period of investigation.²³

Although much of the financial information gathered in this investigation is confidential, we note that the financial performance of the industry was weak and deteriorated during the period of investigation.^{24 25}

In sum, the data for industrial rayon industry show it to be experiencing difficulties. While there was an increase in many indicators from 1988 to 1989, corresponding with the sudden departure of Avtex from the market, almost all of the indicators declined substantially thereafter. Inventory levels further indicate an industry experiencing difficulties. Based on the foregoing, we find a reasonable indication that the industry is experiencing material injury.²⁶

²² Report at A-20.

²³ Report at A-23.

²⁴ Report at A-21-23.

²⁵ We have considered the data relating to the industrial rayon industry. We have not considered overall establishment data in this determination. The Commission, will, however, seek the data in any final investigation. Transcript of Commission Meeting of October 16, 1991 at 15-17.

²⁶ Acting Chairman Brundale does not reach a separate legal conclusion concerning the presence or absence of material injury based on this information. While she does not believe an independent determination is either required by the statute or helpful, she finds the discussion of the condition of the domestic industry to be useful in determining whether any injury resulting from the dumped imports is material. The extremely high dumping margins (over 200 percent), the large market share of the subject imports, and the reasonable degree of substitutability between them and the domestic like product, prevent her from concluding at this stage of the investigation that there is no material injury.

III. Allegations of No Imports from the Netherlands

Respondents in these investigations maintain that there have been no imports at all from the Netherlands during the period of investigation, despite official U.S. import statistics to the contrary. They contend that all imports of rayon filament yarn from both the Netherlands and Germany have been reported under incorrect HTS headings, and that they only became aware of this error as a result of these investigations. This assertion was first made known to the petitioner at the preliminary conference.

The HTS classifies high-tenacity rayon filament yarns under HTS No. 5403.10.3040, and certain textile rayon yarns under HTS No. 5403.31.0020. In addition, there is a basket category for other filament yarns, HTS No. 5403.39.0020. According to respondents, imports of high-tenacity rayon filament yarn from Germany have been reported under the basket category, while imports of textile rayon from both Germany and the Netherlands have been reported under the high-tenacity category. Respondents assert that the misreporting was the result of two independent mistakes. First, textile rayon, which is imported from Akzo Fibers, B.V. (the Dutch company) and Akzo Faser, A.G. (the German company), has been imported under the high-tenacity category by an independent importer and distributor of Akzo products, allegedly due to the mistake of the importer's customs broker.²⁷ Respondents also assert that industrial rayon from Germany has consistently been imported into the United States by Akzo Fibers, Inc. under the basket category for filament yarns. The consequences of these mistakes, according to respondents, is that the official import statistics for the subject imports are incorrect,

²⁷ Respondents' post-conference brief at 6.

and that there have, in fact, been no imports of high-tenacity rayon yarn from the Netherlands during the period of investigation.

In support of these allegations, respondents provided us with Customs Form 7501 for a significant number of entries of the subject product from Germany during the period of investigation. The documents indicate that the vast majority of Akzo's imports of the subject product were in fact misclassified by the firm's customs broker. Only a small amount of product, which was cleared by another customs broker, appears to have been classified properly.²⁸

Petitioner acknowledged at the conference that it had some concerns about the official import statistics. Petitioner did not question the quantity figures provided in the statistics, but indicated that the value figures appeared to be much higher than the price of the product in the market.²⁹

In the post-conference brief, petitioner urges that there is no credible evidence that there are no imports from the Netherlands.³⁰ Petitioner maintains that the issue of the amount and source of the subject merchandise is so clouded by incorrect information and unresolved questions that the Commission has "no adequate basis to evaluate the question of material injury only with respect to Germany".³¹ Petitioner urges that official U.S. import data for high-tenacity rayon filament yarn currently show that there are imports of the subject merchandise from the Netherlands, and that respondents' data has not been scrutinized by competent, relevant authorities at either the

²⁸ Report at A-27-28.

²⁹ Preliminary Conference Transcript at 12-14, See also, Petition at 16.

³⁰ Petitioner's post conference brief at 6.

³¹ Id. at 9.

Bureau of the Census, Department of Commerce, or the U.S. Customs Service.³²

Petitioner further maintains that it is well documented that Akzo ships high-tenacity rayon yarn from its plant in the Netherlands to Germany and vice versa, and that both countries export large amounts of yarn to third countries.

Consequently, petitioner maintains that it may not be possible for Akzo to ascertain whether yarn manufactured in the Netherlands was shipped to U.S. customers. Moreover, petitioner contends that there is no way for respondents to know whether any high-tenacity rayon yarn produced in the Netherlands has been shipped to the United States by processors in Europe or by respondents' own customers in Europe that may also have plants or affiliations in the United States.³³ Petitioner urges us to reject respondents' claims until a satisfactory review and verification of all of the issues has been completed.³⁴

While we have no reason to disbelieve the information submitted to us by respondents, we note that the Department of Commerce has initiated an investigation regarding imports of high-tenacity rayon yarn from the Netherlands. During the course of that investigation, Commerce will presumably address the question of whether there were, in fact, any imports from the Netherlands, in order to determine dumping margins. In light of the uncertainty surrounding the question of the existence of imports from the Netherlands, and the likelihood that further evidence will be developed by Commerce as well as by the Commission in the event of a final investigation,

³² We note that the Commission Investigator attempted to independently verify respondents' claim with the U.S. Customs Service. However, the Customs Service was unable to verify past misclassification at that time.

³³ Petitioner's post-conference brief at 13-14.

³⁴ Id. at 14.

we find that a negative preliminary determination based on the lack of imports from the Netherlands is unwarranted in light of American Lamb.³⁵ We will revisit this issue in any final investigation.

IV. Cumulation³⁶

In determining whether there is material injury by reason of the LTFV imports, the Commission is required to cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports are reasonably coincident with one another and compete with one another and with the domestic like product in the United States market,³⁷ unless imports from a subject country are negligible and have no discernible adverse impact on the domestic industry.³⁸

In deciding whether imports compete with each other and with the domestic like product, the Commission has generally considered four factors, including:

- (1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

³⁵ We cannot find, at this time, that no likelihood exists that contrary evidence will arise in a final investigation.

³⁶ Commissioner Rohr finds that it is inappropriate to cumulate the imports in these preliminary investigations and does not join this section of the opinion. See Additional Views of Commissioner Rohr at 21.

³⁷ 19 U.S.C. § 1677(7)(C)(iv); Chaparral Steel Co. v. United States, 901 F.2d 1097, 1105 (Fed. Cir. 1990).

³⁸ 19 U.S.C. § 1677(7)(C)(v).

(4) whether the imports are simultaneously present in the market.³⁹

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.⁴⁰ Furthermore, only a "reasonable overlap" of competition is required.⁴¹

As discussed above, we decline to find at this preliminary stage, that there are no subject imports from the Netherlands, when the official U.S. import statistics show that there are, and that their volume is significant.⁴² Cumulation follows easily.⁴³ The imported products compete with one another

³⁹ See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (CIT 1988) aff'd, 859 F.2d 915 (Fed. Cir. 1988).

⁴⁰ See Wieland Werke, AG v. United States, 718 F.Supp. 50 (CIT 1989); Granges Metallverken AB v. United States, 716 F.Supp. 17 (CIT 1989); Florex v. United States, 705 F.Supp. 582 (CIT 1989).

⁴¹ See Wieland Werke, AG v. United States, 718 F.Supp. 50, 52 (CIT 1989) ("Completely overlapping markets are not required."); Granges Metallverken AB v. United States, 716 F.Supp. 17, 21, 22 (CIT 1989) ("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and all domestic like products ... the Commission need only find evidence of reasonable overlap in competition"); Florex v. United States, 705 F.Supp. 582, 592 (CIT 1989) ("[c]ompletely overlapping markets is [sic] not required.")

⁴² We want to emphasize that, in light of the evidence presented to date in this investigation, our use of the U.S. official import statistics for purposes of cumulation should not be construed to mean that we are convinced of the accuracy of these statistics.

⁴³ We note that respondents have asserted that the negligible imports provision is applicable because there are no imports from the Netherlands. Respondents post-conference brief at 11-12.

Section 1330 of the Omnibus Trade and Competitiveness Act of 1988 provides that the Commission is not required to cumulate in cases in which it determines that imports of the merchandise subject to investigation from a particular country are negligible and have no discernible adverse impact on the domestic industry. In determining whether imports are negligible, the Commission shall consider all relevant economic factors including whether:

(continued...)

and with the domestic like product. We note that even though respondents maintain that the imported product is of higher quality, and in some applications, the domestic product would not meet the specifications of certain end users, respondents concede that the imported high-tenacity rayon is substitutable for petitioner's product in most applications.⁴⁴ The record indicates that there is overlap in the type of high-tenacity rayon filament products produced at both the Dutch and German establishments, and the subject product is imported by a U.S. affiliate of both of the foreign producers. The existence of common or similar channels of distribution can reasonably be inferred. We find, therefore, that cumulation is appropriate for purposes of these preliminary determinations.⁴⁵ We will, of course, revisit the issue of cumulation of imports in any final investigation after there has been further investigation on the issue of whether there are imports from the Netherlands.

⁴³(...continued)

(I) the volume and market share of the imports are negligible,

(II) sales transactions involving the imports are isolated and sporadic, and

(III) the domestic market for the like product is price sensitive by reason of the nature of the product, so that a small quantity of imports can result in price suppression or depression.

19 U.S.C. § 1677(7)(C)(v).

Because we do not find that there are no imports from the Netherlands for purposes of this preliminary determination, we do not find the negligible imports provision of the statute to be applicable. We will, however, revisit this issue in any final investigation.

⁴⁴ Respondent's post-conference brief at 31.

⁴⁵ We note that our determination under American Lamb to continue this investigation with respect to the Netherlands, and our discussion, infra, of a reasonable indication of material injury by reason of imports based on reported data from Germany provide a basis for independent affirmative preliminary determinations for each country.

V. Reasonable Indication of material injury by reason of allegedly LTFV imports from Germany and the Netherlands⁴⁶ ⁴⁷

The final step in the Commission's preliminary determination in an antidumping investigation is to determine whether material injury to the domestic industry is "by reason of" the imports under investigation.⁴⁸ In making this determination, the Commission considers the volume of imports, the effect of such imports on prices of the like product, and the effect of such imports on the domestic industry.⁴⁹ The Commission examines whether import volumes or increases in volume are significant, whether there has been significant underselling by imports, whether imports significantly depress or suppress prices for the like product, and adversely affect such factors as domestic production, sales, capacity utilization, inventories, employment, and profits.⁵⁰

⁴⁶ Acting Chairman Brunsdale does not join in this section of the opinion. See, note 26, supra.

⁴⁷ Commissioner Rohr joins this section of the opinion noting that it is based on data relating solely to the subject German imports and is the basis for his preliminary affirmative determination as to Germany. See his Additional Views at 21 for a discussion of his affirmative preliminary determination as to Dutch imports.

⁴⁸ 19 U.S.C. § 1673b(a).

⁴⁹ 19 U.S.C. § 1677(7)(B)(i).

⁵⁰ 19 U.S.C. § 1677(7)(C). The Commission may consider other factors it deems relevant, but must explain why they are relevant. 19 U.S.C. § 1677(B)(ii).

In making its determination, the Commission may take into account other causes of harm to the domestic industry, but it is not to weigh causes.⁵¹ The imports need only be a cause of material injury.⁵²

Based upon the information available in these preliminary investigations, we determine that there is a reasonable indication that the domestic high-tenacity rayon filament yarn industry is materially injured by reason of imports from Germany and the Netherlands.⁵³

In these preliminary investigations, we find that the volume of imports of high-tenacity rayon filament yarn and the increase in market share of the imported product are significant. Imports of high-tenacity rayon filament yarn increased from 1988-1990, while decreasing in the interim period (January-June 1991).⁵⁴ This increase in import volume occurred at a time when apparent domestic consumption was decreasing. Market penetration of the imported product in fact increased substantially throughout the period of investigation, with a corresponding loss of market share by the U.S. industry.⁵⁵

Although the pricing data in these investigations are confidential, we note that the data collected and analyzed supports our conclusion that there

⁵¹ "Current law does not...contemplate that the effects from the subsidized [or LTFV] imports be weighted against the effects associated with other factors (e.g., the volume and prices of nonsubsidized [LTFV] imports, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry) which may be contributing to overall injury to an industry." S. Rep. No. 249, 96th Cong. 1st Sess. 57-58, 74 (1979).

⁵² Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (CIT 1988); Hercules, Inc. v. United States, 673 F. Supp. 454, 479 (1987).

⁵³ We note that the import data are based on data reported to the Commission on German imports only because respondents reported no imports from the Netherlands. See n.35, supra.

⁵⁴ Report at A-28.

⁵⁵ Report at A-29.

is a reasonable indication that the industry is materially injured.⁵⁶ There have been instances of underselling by the imported product. Respondents urge that quality, rather than price controls purchasing decisions in the high-tenacity rayon filament yarn market. We will further examine the quality issue, and its impact on pricing and purchasing decisions in any final investigation.

In light of the condition of the domestic industry, we conclude that the increasing import volumes, corresponding market penetration, and the pricing data indicate that allegedly LTFV imports have adversely affected the domestic industry's performance.

Conclusion

For all of the reasons set forth above, we determine that there is a reasonable indication that the domestic industry producing high-tenacity rayon filament yarn is materially injured by reason of allegedly LTFV imports from Germany and the Netherlands.

⁵⁶ Report at A-30-33.

ADDITIONAL VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE
High Tenacity Rayon Filament Yarn from Germany and the Netherlands

Invs. Nos. 731-TA-530 and 531 (Preliminary)

I write separately only because our opinion addresses one issue too coyly. We state that "[w]e have not considered overall establishment data in this determination. The Commission, will, however, seek the data in any final investigation." See Tr. of Oct. 16 Commission Mtg. at 15-17. The fact of the matter is that the petitioner did submit a completed questionnaire containing overall establishment data to the Commission. The Commission received it before the APO service list was issued. When the petitioner learned that in-house counsel for respondents had asked for access to APO information, the petitioner became uncomfortable with the prospect of providing this overall data to them, even if those counsel met the requirements of 19 CFR Section 207.7(a)(3)(i)(A) and (ii).

The petitioner therefore asked our staff if there was a way to withdraw this already submitted information from the record to avoid having to serve it. Under our regulations there was not. Section 207.3(h)(1) includes within the definition of the record "[a]ll information presented to or obtained by the Commission during the course of a proceeding, including completed questionnaires" Section 207.4(a) states that "[t]he record shall be maintained contemporaneously with each actual filing in the record." And Section 207.7(a)(1) requires the Secretary to "make available all business proprietary information contained in . . . written submissions filed with the Commission at any time during

the investigation" to authorized applicants.

Despite these seemingly clear regulations, and apparently unvarying past practice, the petitioner was allowed to submit revised questionnaires that left blank the information on overall establishment data. All copies of the original questionnaire were then destroyed, without any Commissioners' knowing about it until after the fact.

This is plainly unacceptable.¹ I expect the missing evidence to be restored to the record, and then properly dealt with, in any final investigation.

¹ Although there is more than enough evidence in the extant record to justify our affirmative determination, I note my concern that the destruction of material information in our record may compel an affirmative determination in a preliminary investigation under American Lamb. How, after all, could one say in those circumstances that no likelihood exists that contrary evidence will arise in a final investigation?

**ADDITIONAL VIEWS OF COMMISSIONER DAVID B. ROHR
CONCERNING CUMULATION AND CAUSATION**

I concur with my colleagues that there is a reasonable indication of material injury to the domestic high-tenacity rayon filament yarn industry by reason of imports from Germany and the Netherlands that are allegedly sold at less than fair value. However, I must, respectfully, disagree with their conclusions regarding cumulation. I therefore make my own findings as to cumulation and causation. For the reasons discussed herein and in the majority opinion in which I concur, I conclude that an affirmative preliminary determination is required as to imports from each of the two countries individually.

Cumulation

The essential issue as to cumulation in this case is whether the imports compete with one another and with the product of the domestic industry. In my view, the information contained in the record provides no basis for concluding that the imports from the Netherlands and Germany compete with one another. Further, the information that does exist on the record strongly suggests that they do not compete.

I assume for purposes of the discussion that follows that the imports from the Netherlands that were entered as high-tenacity rayon filament yarn are, in fact, the articles subject to investigation. As noted in the Commission's Views, there is some evidence on the record that these imports were misclassified and are not in fact the articles subject to investigation. I concur with my colleagues that the evidence does not rise to the level of clear and convincing required for purposes of a preliminary determination. I am therefore required to assume that these imports are in fact high-tenacity rayon filament yarn.

I begin my examination of competition between the two sets of imports by looking at the fungibility of the articles themselves. The record indicates that all of the high-tenacity rayon filament yarn produced in the Netherlands is of a type known as "super 2," which is directly competitive with the domestically produced yarn. The German-produced yarn

includes both "super 2" and a product called "super 3," which is alleged to have different and superior qualities to "super 2." While these differences are not sufficient to create a distinction within the context of the Commission's like product determination, they may nevertheless be considered in the context of an analysis of competition for cumulation purposes.

We know, however, that, while the "super 3" yarn may make up a majority of German imports, a significant quantity of the German imports appear to be "super 2" yarn. Such yarn must be considered fungible with the Dutch product. Further, the alleged distinctions between "super 2" and "super 3" yarns have not been sufficiently established for me to conclude that these products are not at least relatively fungible.

Because the imports are relatively fungible there is at least a theoretical possibility that they could compete. An affirmative determination, however, must not be made only on the basis of a theoretical possibility. When I examine the record for evidence of actual competition, I am forced to conclude that there is no actual competition between the imports and that cumulation is therefore inappropriate.

We have examined, for example, import documents and official Customs documents and statistics, including the Net Import File, as well as public statements on the record by the parties to these investigations and others. These documents and statements provide cross corroboration for the fact that all of the German high-tenacity products has entered the United States to a single importer through the Port of Savannah. They also allow me to conclude that all of the Dutch product, which we assume to be high-tenacity yarn, entered to a different single importer through the Port of New York. There is therefore at least some geographic separation of the imports.

Furthermore, during the Commission's investigation of purchasers of the imported product, all purchasers that the Commission contacted reported purchasing the German product. None reported purchasing Dutch product. None were even aware of the alleged importer of the Dutch product as a source of the high-tenacity product. The purchasers whom the Commission contacted accounted for the vast majority of the German imports. All were aware of the domestic producer as an source of the like product. These companies are

relatively large and/or sophisticated entities. Their lack of awareness of the Dutch imports and of the importer of the Dutch products is persuasive to me that, even assuming the Dutch imports are in fact high-tenacity yarn, there is little or no competition between the Dutch and German products.

Additionally, I note that the lack of competition between the imports is further confirmed by the Commission's lost sales and lost revenue investigations. Petitioner's allegations were cast generally as sales or revenue lost to German or Dutch product. The Commission's investigation of the alleged lost sales indicates that all involved German product. No Dutch product was involved. The lost revenue allegations also appear to have involved only material that can be identified as German.

There is therefore no information on the record which supports the existence of any competition between Dutch and German imports. In this situation, I do not feel it would be appropriate to cumulate the Dutch and German imports for purposes of my preliminary determinations.

Causation

Because I have found cumulation to be inappropriate at this time, I must analyze the impact of the Dutch and German imports on the domestic industry separately. With regard to German imports, I note the analysis of cumulated imports contained in section V of the Commissions Views is, in fact, based on data concerning solely German imports. For purpose of these additional views I adopt that analysis as my own for purposes of providing a reasonable indication of the causal impact of German imports on the domestic industry.

My basis for making an affirmative determination as to Dutch imports and therefore continuing the investigation as to such imports is different. The Commission was able to gather very little information about Dutch imports. Respondents and the importer simply asserted that the Dutch imports were not high-tenacity rayon filament yarn, but rather were textile grade rayon filament yarn. As discussed above, the evidence on this point is not clear and convincing as required by the standard applicable to Commission preliminary

determinations. While I may suspect there may have been some misclassification of the Dutch imports, I cannot be certain at this point.

I note that the Commerce Department's examination of exporter's records for purposes of its investigation may shed light on whether any goods shipped from the Netherlands were in fact high-tenacity product. Further, I believe an investigation of import records by the Customs Service would also be useful to clarify whether and to what extent any misclassification of materials occurred. I believe that the Commission should formally request the Customs Service to conduct such an investigation.

The Commission at present has little other information with regard to the imports. We know the alleged volume of Dutch imports from the official statistics. We have some general information about the "customs value" of the merchandise from the same official statistics, but no other information about price. In this circumstance, I do not feel it would be appropriate to make the determination that there is no reasonable indication of material injury by reason of the Dutch imports.

We have the one piece of information about a substantial volume of Dutch imports, which we must assume, for purposes of this determination, are of high-tenacity material. Because we have no other information at this time, and there is a likelihood that we can obtain additional information in any final investigation, an affirmative determination is necessary.

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INFORMATION OBTAINED IN THE INVESTIGATIONS

INTRODUCTION

On September 6, 1991, North American Rayon Corp. (NARCO), Elizabethton, TN, filed a petition with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) alleging that an industry in the United States is being materially injured and threatened with material injury by reason of imports from Germany and the Netherlands of high-tenacity rayon filament yarn¹ (industrial rayon yarn) that is sold in the United States at less than fair value (LTFV). The subject imports are provided for in subheading 5403.10.30 of the Harmonized Tariff Schedule of the United States (HTS). Accordingly, effective September 6, 1991, the Commission instituted antidumping duty investigations Nos. 731-TA-530 and 531 (Preliminary) under section 733 of the Tariff Act of 1930, to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.

The statute directs the Commission to make its preliminary determinations within 45 days after receipt of the petition or, in these investigations, by October 21, 1991. Notice of the institution of these investigations was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 13, 1991 (56 F.R. 46643). Commerce published its notices of initiation in the Federal Register of October 2, 1991 (56 F.R. 49878). Appendix A presents copies of the Commission and Commerce notices. The Commission held a public conference in Washington, DC, on September 27, 1991, at which time all interested parties were allowed to present information and data for consideration by the Commission. Appendix B presents a list of conference participants. The Commission voted on these investigations on October 16, 1991.

THE PRODUCT

The subject product of these investigations is high-tenacity rayon filament yarn, also known as industrial rayon yarn.² This product is distinguished from other rayon yarns, and from industrial yarns of other materials, by its properties, its method of production, and its end uses. Other rayon yarns and industrial yarns of other materials will be discussed briefly in this section of the report.

¹ For purposes of these investigations, high-tenacity rayon filament yarn is defined as multifilament single yarn of viscose rayon with twist of 5 turns or more per meter, having a denier of 1100 or greater and a tenacity greater than 35 centinewtons per tex. The subject yarn has reportedly been entering under HTS subheading 5403.39.00 but, according to the U.S. Customs Service, should not be considered classifiable therein. See "U.S. tariff treatment" section below.

² There are certain industrial applications for rayon yarn other than high-tenacity rayon yarn; however, within the industry and in this report, the term "industrial rayon yarn" refers exclusively to high-tenacity rayon yarn.

Description

Rayon is an artificial fiber composed of regenerated cellulose, or wood pulp. Rayon yarn can be produced from either filaments or staple fibers; however, industrial rayon yarn is a filament yarn.³ Filament rayon yarn can be produced using two methods--viscose and cuprammonium. Industrial rayon yarn, however, is produced using the viscose method.⁴

The tenacity, or breaking strength, of rayon yarn is expressed as a ratio of breaking point to thickness, usually in grams per denier.^{5,6} A higher tenacity corresponds to a stronger yarn. Tenacity is determined by both the chemical composition of the yarn and by the production process. There are three commonly recognized tenacity ranges for rayon filament yarns: normal or regular, medium, and high.⁷ High-tenacity (industrial) rayon yarn is defined by the petitioner as having a tenacity greater than 4.0 grams per denier.⁸ Most applications of industrial rayon yarn require at least a "super 2" yarn, which has a tenacity of approximately 5.0 grams per denier.

Industrial rayon yarn ranges in thickness from 1100 to 4400 denier. In the United States, other rayon filament yarns are produced in thicknesses up to only *** denier.⁹ As shown in table 1, most of the industrial rayon yarn sold in the United States has a denier of either 1650 or 2200, although there are small quantities of 1100, 3300, and 4400 denier yarns.

³ A filament is a continuous strand of fiber. Filament yarns consist of multiple filaments twisted together. Staple is made up of a bundle of fibers that have been cut to specific lengths, usually 1 to 3 inches depending on the end use. Staple fiber yarn is spun in much the same way that cotton is spun. In the United States, rayon staple fiber is produced by the BASF Corp., Williamsburg, VA, and by Courtaulds Fibers, Inc., Mobile, AL.

⁴ There was no U.S. production of cuprammonium rayon yarn during the period of investigation.

⁵ Denier is a measure of the thickness of yarn expressed as the weight in grams of 9,000 meters of yarn. Thickness may also be expressed in terms of decitex, which is the weight in grams of 10,000 meters of yarn.

⁶ The HTS expresses tenacity in terms of centinewtons per tex. See note 6 to sec. XI of the HTS. A centinewton is a unit of force capable of accelerating a 10-gram mass at 1 meter per second per second.

⁷ NARCO produces yarn of *** tenacities.

⁸ This is approximately 35 centinewtons per tex. There do not appear to be rigid definitions of each tenacity range; however, respondents did not express any disagreement with the petitioner's definition of the subject product.

⁹ Conversation with U.S. industry officials, Sept. 23, 1991.

Table 1

Industrial rayon yarn: U.S. shipments of the domestic and subject imported product, by denier, 1990

<u>Denier</u>	<u>Domestic product</u>		<u>Subject imports</u>	
	<u>Quantity</u> (1,000 lb)	<u>Value</u> (\$1,000)	<u>Quantity</u> (1,000 lb)	<u>Value</u> (\$1,000)
*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Uses

Industrial rayon yarn serves primarily for reinforcement of rubber products such as tires and automotive and industrial hoses and belts. Some minor end uses include thread for shoes and strapping. The yarn is usually plied with either the rubber or plastics material in the end product. Industrial rayon yarn imparts such properties as strength and resistance to heat, abrasion, shrinkage, and stretching. The automotive sector is by far the largest end-use market for industrial rayon yarn.

The largest current end use for industrial rayon yarn is for automotive and appliance hoses. Rayon's chemical resistance and high-temperature stability make it a particularly good reinforcement material in automotive brake hoses and radiator coolant hoses. In 1990, rayon accounted for an estimated 28 percent of total automotive and industrial hose reinforcement materials.¹⁰

The second-largest use of industrial rayon yarn is in the production of tire cord fabric,¹¹ which is used for reinforcement in pneumatic tires. At one time, rayon was the primary fiber used for tire reinforcement. In the United States, however, rayon has been largely replaced by other materials. Currently, rayon is used in less than 1 percent of the tire cord fabric produced in the United States. Rayon tire cord continues to be used in tires that undergo extreme punishment such as heavy-duty equipment tires, tractor tires, motorcycle tires, and airplane tires. Rayon is also used in high performance tires.¹²

¹⁰ Respondents postconference brief, ex. 5. This share is down from 30 percent in 1980.

¹¹ Tire cord fabric is a loosely woven fabric consisting of heavy cords in the warp (lengthwise) and much lighter weight (often cotton) yarns in the filling (crosswise). The primary purpose of the filling yarns is to keep the warp cords or yarns in a parallel and level position to each other. The lightweight cotton filling yarns generally melt as the tire is being produced.

¹² "High-performance" tires are defined as those designed for extended use at speeds in excess of 100 miles-per-hour. Rayon tire cord is used both in racing car tires and in European passenger car tires.

A third application is in reinforcing automotive and appliance belts. Rayon is particularly good for strengthening V-belts and timing belts because it has a dimensional stability that resists deformation by stretching. Belts that require more flexibility cannot use rayon. Again, rayon holds only a very small (4-percent) share of the overall belt-reinforcing market.¹³

The term "textile yarn," as used within the industry and in this report, refers generally to regular- and medium-tenacity rayon staple fiber and filament yarns because these yarns are used primarily in textile applications. NARCO is the only U.S. producer of textile rayon filament yarn.

In addition, the petitioner produces a carbonized rayon yarn used as an ablative (heat dissipating) material on spacecraft and missiles.¹⁴ NARCO is the only authorized supplier of carbonized rayon yarn to the U.S. Department of Defense (Defense), the National Aeronautics and Space Administration (NASA), and their subcontractors. These agencies and firms, are, in turn, NARCO's only purchasers of this product.

Production Process

The basic production steps described below apply not only to industrial yarn production but also to textile and carbonized filament yarn production and (up to a certain point) to staple fiber production. However, the grade and type of wood pulp, the type and strength of chemicals, the length of aging periods, and the extrusion and drawing processes will all vary depending on the yarn type. Rayon yarn properties such as tenacity, denier, acceptance of finishes, dyeability, etc., are determined by variations in inputs and in the production process. Theoretically, up to the extrusion stage, production equipment can be converted between industrial, carbonized, and textile rayon yarn.¹⁵ The production processes and basic technology for producing rayon yarn are well established and have remained largely unchanged for decades. Research and development in product performance, however, are ongoing. Production techniques, technology, and use of raw materials are similar worldwide.

Currently, all rayon yarn production in the United States is by the viscose method. In this process, sheets of specially processed wood pulp¹⁶ are steeped in caustic soda, shredded, and then treated with carbon disulfate. The resulting orange-colored crumbs, called xanthate crumb, are dissolved in a dilute caustic soda solution, producing a thick, honey-colored liquid (viscose). After aging and filtering, the viscose solution is forced through the tiny holes of spinnerets into a dilute sulfuric acid bath,¹⁷ where it

¹³ Respondents postconference brief, ex. 5. This share is up from 3 percent in 1980.

¹⁴ NARCO reported that there is no U.S. production of medium-tenacity rayon yarn. ***. Conversation with company officials, Oct. 8, 1991.

¹⁵ ***. Conversation with company officials, Sept. 23, 1991.

¹⁶ Industrial rayon is made from pulp with a high-alpha cellulose, whereas textile rayon is made from lower alpha cellulose pulp. High-alpha cellulose is the highest quality grade of chemically produced wood pulp available.

¹⁷ Textile yarn is spun into a bath of a different chemical solution.

solidifies ("regenerates") into continuous filament fiber. This particular process of extrusion and regeneration is referred to as "wet spinning."¹⁸

As the rayon filament emerges from the spinneret, it passes around a series of wheels and through a series of baths that stretch and wash the strands. This "drawing" process causes the molecules in the fiber to arrange themselves into a more orderly pattern. As the pattern of the molecular arrangement becomes better oriented, the strength increases and the fiber's ability to stretch without breaking decreases. A wide range of strength-stretch combinations may be produced at this stage of production. In the drawing stage, the machinery used for the production of industrial rayon yarn is designed specifically for the production of a yarn of great strength and little stretch. Textile yarn cannot be drawn on this same equipment.¹⁹

After the drawing process, a chemical "spin" finish is applied to the yarn and twist is added.²⁰ Additional treatments may be applied to the yarn depending on customer specifications. NARCO has the capacity to apply resorcinol formaldehyde latex (RFL) and isocyanate finishes on its industrial yarns.²¹ Currently, the subject imports are without any finish other than a spin finish. The imported product is further treated, if necessary, by a converter.²² Some end users, especially larger ones such as the major tire manufacturers, have the capacity to further treat and twist the yarn in their own facilities.

Industrial rayon yarn is wound and shipped to the customer in one of three "packages": on cones, tubes, or beams. As shown in table 2, domestically produced yarn is shipped in all of the three forms,²³ depending on the customer preference. The imported yarn, in contrast, is typically shipped in 10-pound packages.²⁴ Converters often rewind the imported yarn on tubes, cones, or beams according to customer specifications.

¹⁸ The rayon staple fiber production process can be described similarly up to this stage.

¹⁹ ***.

²⁰ According to the domestic producer, industrial yarn is typically sold with a "producers' twist" of 2.5 turns per inch (TPI).

²¹ These finishes help the yarn adhere better to rubber. Such finishes are never used on textile rayon yarns. Likewise, textile and carbonized finishes are never used on industrial yarn.

²² Converters specialize in the finishing, twisting, and rewinding of yarn to customer specifications. The main converters of industrial rayon yarn in the United States are Beaver Manufacturing Company (Beaver) and Bibb Manufacturing Company (Bibb), both of which are in the Atlanta, GA, area.

²³ The U.S.-produced industrial rayon yarn is sold either on tubes containing *** pounds of yarn, on cones holding about 7 pounds of yarn, or on beams with 1,500 pounds of yarn. The tubes vary in size depending on customer specifications.

²⁴ Transcript of the Commission's conference (transcript), p. 69. An official at Beaver described the Akzo product as both a "commodity" and an "engineered" fiber. Ibid., p. 104.

Table 2
Industrial rayon yarn: U.S. shipments of the domestic and subject imported product, by type of package, 1990

<u>Package</u>	<u>Domestic product</u>		<u>Subject imports</u>	
	<u>Quantity</u> (1,000 lb)	<u>Value</u> (\$1,000)	<u>Quantity</u> (1,000 lb)	<u>Value</u> (\$1,000)
*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Substitute Products

As noted above, during the period of investigation, industrial rayon yarn occupied such narrow market niches as reinforcing for certain tires and automotive and industrial hoses and belts. This discussion addresses substitutes for industrial rayon yarn during this period and in these markets.²⁵ The substitutability of the domestic and imported products is also addressed.

Substitutability in either area may be retarded by the time and cost required both to redesign products using a different reinforcing material and to qualify the material of a specific supplier. Representatives of the Goodyear Tire & Rubber Co. (Goodyear) estimated qualification alone to take up to 2 years and to be "quite expensive."²⁶

Substitutability of the Domestic and Imported Products

Respondents assert that the domestic and imported products are not perfect substitutes because of certain strength and quality advantages of the latter. Reportedly, in 1990, 74 percent of the imported product was "super 3" yarn, which is slightly stronger than the domestic "super 2" yarn.²⁷ Respondent witnesses testified that quality problems, product liability

²⁵ Commercial production of rayon in the United States began in 1910. Since that time other products have been developed which have substituted for the physical properties of industrial rayon yarn in certain applications. Particularly during the 1960s and 1970s, rayon was displaced from the U.S. passenger car tire market by other materials.

²⁶ Transcript, p. 113. ***. Conversation with company officials, Sept. 24, 1991.

²⁷ Transcript, p. 68. The petitioner maintains that "super 3" is 10-percent stronger than the "super 2" whereas respondents contend that the former is 13 percent stronger. The remainder of the imported product is "super 2" yarn.

concerns, and difficulties in obtaining timely shipments forced them to increase dependence on the subject imports.²⁸

In response, the petitioner maintains that its "super 2" yarn competes head-to-head with the imported "super 2" and "super 3" yarns.²⁹ NARCO representatives acknowledged that *** did result during the period immediately following the abrupt shutdown of Avtex Fibers, Inc. (Avtex), another U.S. producer.³⁰ Otherwise, however, quality issues, according to the petitioner, simply mask the principal reason that purchasers shifted to imports-- reportedly low prices of the LTFV imports.³¹

Substitutes for Industrial Rayon Yarn

An Akzo official testified at the conference that some substitution of industrial rayon yarn by other materials occurred in the United States when Avtex shut down, causing a supply shortage that forced many end users to seek alternative reinforcement materials.³² Other industry sources have indicated that substitution of other materials for rayon leveled out about 5 years ago.³³

There are substitutes for rayon in each of its industrial applications. However, there is no one substitute in all of these applications. Rayon has a combination of properties that are not available in any other single product. Substitutes discussed here include nylon, polyester, polyvinylalcohol (PVA), and aramid fibers.

Both industrial polyester and nylon yarns are substitutes for industrial rayon in specific applications.³⁴ Industrial polyester and nylon yarns can be produced with higher tenacities than industrial rayon yarn. However, nylon and polyester do not have the high modulus (resistance to deformation by stretching) characteristic that rayon does, which is important in tires that take a lot of punishment and in industrial belting that must retain its shape. Advances have been made in the development of a high-modulus, low-shrinkage

²⁸ Transcript, pp. 82-90 and 95-96. ***. Conversation with company officials, Sept. 23, 1991. According to a survey commissioned by Bibb, NARCO ***. (Statement of Robert E. Major, attachment at p. 12.) Results of the study are qualified as follows: "***." (Ibid., p. 2.)

²⁹ Transcript, p. 38.

³⁰ Ibid., p. 33, and conversation with company officials, Sept 23, 1991. See the section of this report entitled "U.S. producers" for a discussion of the Avtex shutdown.

³¹ Transcript, pp. 37 and 133.

³² Transcript, p. 71.

³³ Conversation with ***, Sept. 18, 1991. ***. (Conversation with company officials, Sept. 20, 1991.) Although other products are constantly being developed and improved to meet new end-use requirements, *** estimated that further significant substitution for industrial rayon yarn is another 5 years away.

³⁴ The petitioner specified that ***.

Polyester yarn as a close substitute for rayon in certain applications.³⁵ In the case of high-performance tires, rayon still remains a primary reinforcement material because of its high thermal stability. (Rayon does not melt, as do polyester and nylon.) Industry sources have indicated that prices of HMLS/DSP range *** per pound, and those for industrial nylon yarn *** per pound, compared with industrial rayon yarn typically priced *** per pound.³⁶ Aramids, which do not melt and are "ultra" high-modulus, have also been used in tire cord fabric. These yarns, however, are priced many times higher than industrial rayon yarn or any of its other substitutes.³⁷

In hoses, such as automotive brake hoses and radiator coolant hoses, industrial rayon yarn is preferred because of its chemical resistance, high-temperature stability, and high modulus (which improves the bursting pressure of the hose). PVA may also be used in these types of hoses because it also has a high resistance to chemicals, unlike synthetic fibers such as polyester or nylon.³⁸

U.S. Tariff Treatment

Industrial rayon yarn is classified in subheading 5403.10.30 (statistical reporting number 5403.10.3040) of the Harmonized Tariff Schedule of the United States (HTS), which provides for single, multifilament high-tenacity yarn of viscose rayon with a twist of 5 turns or more per meter. However, according to respondents, the subject yarn has been entering under HTS subheading 5403.39.00 (statistical reporting number 5403.39.0020), which provides for single, monofilament or multifilament yarn of viscose rayon, other than of high tenacity, untwisted or with twist of less than 5 turns per meter. The column 1-general or most-favored-nation (MFN) rate of duty provided for both of the above-mentioned HTS subheadings is 10 percent ad valorem. Imports of rayon yarns are not eligible for preferential duty treatment other than that provided for eligible products from Israel and Canada.³⁹ Duties under the above-mentioned HTS subheadings are free for products from Israel and 7 percent ad valorem (in 1991) for those from Canada.

U.S. imports of industrial rayon yarn are subject to restraint under the Multifiber Arrangement (MFA),⁴⁰ which provides the international legal

³⁵ HMLS (high-modulus low-shrinkage) polyester is produced by Hoechst Celanese Corp., and DSP (dimensionally stabilized polyester) is produced by Allied Signal.

³⁶ Conversation with ***, Sept. 18, 1991. Also, ***. See also transcript, p. 70.

³⁷ Aramids (Kevlar and Nomex) are produced in the United States by E.I. du Pont de Nemours & Co., Inc.

³⁸ PVA is not produced in the United States. According to industry sources PVA is imported into the United States mainly from Japan.

³⁹ Preferential rates of duty are applicable to imports from Israel under the United States-Israel Free-Trade Area Implementation Act of 1985 and from Canada under the United States-Canada Free-Trade Agreement.

⁴⁰ The MFA, formally known as the Arrangement Regarding International Trade in Textiles, is an international agreement negotiated under the auspices of
(continued...)

framework within which importing countries can negotiate agreements with exporting countries to limit their shipments of textiles and apparel.⁴¹ However, neither Germany nor the Netherlands is subject to quota restraints on their exports of industrial rayon yarn to the United States.

PREVIOUS AND RELATED INVESTIGATIONS

Industrial Rayon Yarn

Industrial rayon yarn has been the subject of one previous investigation by the Commission, No. TEA-W-115, conducted under section 301(c)(2) of the Trade Expansion Act of 1962. In 1971, the United Textile Workers of America (AFL-CIO) petitioned the Commission to determine the eligibility of certain workers to apply for adjustment assistance. The workers were the former employees of the Childersburg, AL, plant of Beaunit Fibers Division of Beaunit Corp. (Beaunit), which had produced primarily industrial rayon yarn, and also some textile rayon yarn. The Commission determined that articles like and directly competitive with these yarns were not, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of those workers.⁴²

Textile Rayon Yarn

Textile rayon yarn has been the subject of two other investigations by the Commission conducted under section 301(c)(2) of the Trade Expansion Act of 1962. In 1971, the former workers of the Beaunit's American Bemberg plant petitioned the Commission to determine their eligibility to apply for adjustment assistance. The plant, also in Elizabethton, TN, had produced textile cuprammonium rayon continuous filament yarn. In investigation No. TEA-W-79, the Commission determined that articles like and directly competitive with American Bemberg's cuprammonium rayon yarn were not, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of that plant's workers.⁴³

⁴⁰ (...continued)

the General Agreement on Tariffs and Trade (GATT). The MFA was implemented in January 1974 and was recently extended to now run through January 1993.

⁴¹ HTS subheading 5403.39.00, however, is not covered by quota restrictions under the MFA.

⁴² U.S. Tariff Commission, Viscose Rayon Yarns Wholly of Continuous Fibers: Workers of Childersburg Plant of Beaunit Corporation (inv. No. TEA-W-115), TC publication 435 (Nov. 1971).

⁴³ U.S. Tariff Commission, Cuprammonium Continuous Filament Yarn: Workers of the American Bemberg Plant of Beaunit Corp. (inv. No. TEA-W-79), TC publication 384 (Apr. 1971).

A year later, the Textile Workers Union of America petitioned the Commission to determine the eligibility of the former employees of the Lewistown, PA, plant of American Viscose Division of FMC Corp. to apply for adjustment assistance. The plant had produced textile viscose rayon yarn. In investigation No. TEA-W-167, the Commission determined that articles like and directly competitive with textile viscose rayon yarn were not, as a result in major part of concessions granted under trade agreements, being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of that plant's workers.⁴⁴

Rayon Staple Fiber

During 1959-61, the Commission conducted five antidumping investigations on rayon staple fiber--Nos. AA1921-11 (France), -17 (France), -18 (Belgium), -20 (Cuba), and -21 (West Germany)--under section 201(a) of the Antidumping Act of 1921. In each case the Commission determined that an industry in the United States was not being, and was not likely to be, injured by reason of the importation of rayon staple fiber sold at LTFV.⁴⁵

In 1961, the Commission also conducted an escape-clause investigation on rayon staple fiber, No. 7-95, under section 7 of the Trade Agreements Extension Act of 1951. In that investigation, the Commission determined that rayon staple fiber was not being imported in such increased quantities as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products.⁴⁶

A petition filed in November 1970 sought adjustment assistance for the former workers of the FMC Corp.'s plants in Nitro, WV; Parkersburg, WV; and Front Royal, VA. Although two of the three plants also produced rayon filament yarn, relief was only sought on the basis of their rayon staple fiber operations. In investigation No. TEA-W-35, conducted under section 301(c)(2) of the Trade Expansion Act of 1962, the Commission determined that articles like or directly competitive with rayon staple fiber produced by FMC were not, as a result in major part of concessions granted under trade agreements, being imported in such increased quantities as to cause, or threaten to cause, the

⁴⁴ U.S. Tariff Commission, Viscose Rayon Yarns Wholly of Continuous Fibers: Workers of Lewistown, PA, Rayon Plant of American Viscose Division, FMC Corp. (inv. No. TEA-W-167), TC publication 546 (Feb. 1973).

⁴⁵ U.S. Tariff Commission, Rayon Staple Fiber from France (inv. No. AA1921-11), TC publication [no number] (Dec. 1959); Rayon Staple Fiber from France (inv. No. AA1921-17), TC publication 18 (May 1961); Rayon Staple Fiber from Belgium (inv. No. AA1921-18), TC publication 19 (May 1961); Rayon Staple Fiber from Cuba (inv. No. AA1921-20), TC publication 23 (July 1961); and Rayon Staple Fiber from West Germany (inv. No. AA1921-21), TC publication 24 (July 1961).

⁴⁶ U.S. Tariff Commission, Rayon Staple Fiber (Certain Cellulose Filaments) (inv. No. 7-95), TC publication 12 (Apr. 1961).

unemployment or underemployment of workers at the manufacturing plants concerned.⁴⁷

From September 1978 to May 1979, the Commission completed four more antidumping investigations on rayon staple fiber under section 201(a) of the Antidumping Act of 1921: Nos. AA1921-186 (Belgium), -190 (France), -191 (Finland), and -201 (Italy). In each of these investigations the Commission determined that an industry in the United States was being, or was likely to be, injured by reason of the importation of rayon staple fiber sold at LTFV.⁴⁸

Finally, in March 1983, the Commission concluded investigation No. 104-TAA-13, instituted under section 104 of the Trade Agreements Act of 1979, to determine whether an industry in the United States would be materially injured or threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of rayon staple fiber from Sweden if the existing countervailing duty order were to be revoked. The Commission determined that an industry would be materially injured if that order were revoked.⁴⁹

NATURE AND EXTENT OF THE ALLEGED SALES AT LTFV⁵⁰

The petitioner alleges that AKZO Chemie Verkoopkantoor N.V. (Akzo N.V.) is producing and exporting the subject product to the United States, and selling it here at LTFV. Akzo N.V. is a multinational firm headquartered in the Netherlands with five divisions operating in 50 countries. Its principal products include salt and chemicals, fibers and polymers, coatings, and healthcare products. One subsidiary, Akzo Fibers B.V. (Akzo B.V.), produces industrial rayon yarn in Arnhem and Ede, the Netherlands; another, Akzo Faser A.G. (Akzo A.G.), produces the subject product in Oberbruch and Obernburg, Germany; a third, Akzo Fibers, Inc. (Akzo), is the U.S. importer. Akzo N.V. is the only producer of the subject product in either Germany or the Netherlands.⁵¹

⁴⁷ U.S. Tariff Commission, Rayon Staple Fiber: Certain Workers of the FMC Corporation (inv. No. TEA-W-35), TC publication 357 (Jan. 1971).

⁴⁸ U.S. International Trade Commission, Rayon Staple Fiber from Belgium (inv. No. AA1921-186), USITC publication 914 (Sept. 1978); Rayon Staple Fiber from France and from Finland (invs. Nos. AA1921-190-191), USITC publication 938 (Feb. 1979); and Rayon Staple Fiber from Italy (inv. No. AA1921-201), USITC publication 976 (May 1979).

⁴⁹ U.S. International Trade Commission, Rayon Staple Fiber from Sweden (inv. No. 104-TAA-13), USITC publication 1360 (Mar. 1983).

⁵⁰ Information presented in this section is drawn from the petition. The petitioner relied in part on U.S. official import statistics for information on source countries. To the extent that these statistics are in error, the information presented in the petition may also be incorrect with regard to source countries.

⁵¹ In response to a Commission request, the U.S. Embassy in Bonn identified two other German firms as producers of the subject product. The source of this information was a German textiles association. Counsel for respondents provided a response from the German Association of Chemical Fibers reasserting (continued...)

NARCO calculated LTFV margins based on a comparison of U.S. sales prices and constructed foreign market values. The U.S. prices were based on market information obtained by the petitioner in negotiations with several major U.S. purchasers of the subject product. Such delivered end-user prices were adjusted to arrive at an estimated ex-factory price with which to compare the foreign market value. Since the subject product is sold through a single U.S. firm, the same U.S. sales price was used for calculating the alleged dumping margins for both the German and Dutch product.

The petitioner alleges that home-market and third-country sales do not provide a viable basis for foreign market value because such sales are below Akzo N.V.'s cost of production. Thus, the U.S. producer presents a constructed foreign market value. A comparison of U.S. price and foreign market value, by country and product type, indicates the dumping margins in the ranges presented in the following tabulation (in percent ad valorem):⁵²

<u>Country and product type</u>	<u>LTFV margins</u>
Germany.....	209.40-223.63
The Netherlands.....	205.04-262.25

THE WORLD MARKET

Whereas demand for rayon-reinforced passenger car tires has virtually disappeared in the United States, rayon continues to be a common tire cord material in the European market. Highways with no speed limits or with speed limits substantially above 55 miles per hour require a higher performance tire. Rayon performs particularly well as a rubber-reinforcing material at high speeds and at the resultant higher temperatures. Despite increasing use of polyester and nylon, rayon maintains well above 50 percent of the passenger tire cord market in Europe.

Akzo N.V. is the largest producer of industrial rayon yarn in the world, with a reported 1991 production capacity of approximately 58,000 metric tons (mt) (26 million pounds).⁵³ Other major European producers include Glanzstoff (Austria) and Sicrem (Italy), with estimated production capacities of 9,000 mt (4 million pounds) each in 1991.⁵⁴ The parties have also identified producers in Czechoslovakia, China, India, Mexico, Poland, the USSR, and Yugoslavia. The petitioner has estimated consumption in Europe at 65,000 mt (29 million pounds),⁵⁵ about four times the size of the U.S. market. France, with its Michelin tire production facilities, is the largest industrial-rayon-yarn-consuming nation. Japan is neither a producer nor a significant consumer of industrial rayon yarn.

⁵¹ (...continued)

that Akzo A.G. is the only German producer of the subject product. (Letter from Tom Schaumberg to Rebecca Woodings, dated Oct. 3, 1991, at attachment.)

⁵² The dumping margins presented were calculated by Commerce based on the petition, and presented in the notice of initiation.

⁵³ Transcript, pp. 67-68.

⁵⁴ Petition, ex. 6.

⁵⁵ Ibid.

THE U.S. MARKET

U.S. Producers⁵⁶**North American Rayon Corp.**

A German firm, Glanzstoff, established rayon production facilities in Elizabethton, TN, in 1928. In 1941, the U.S. Government seized the assets of the company and subsequently sold them to the U.S. public. The facility operated under private ownership from 1948 to 1960, at which time it was acquired by Beaunit, a subsidiary of El Paso Natural Gas Co. During the 1960s, Beaunit produced numerous rayon products at several production facilities. Industrial rayon yarn was produced at a plant in Childersburg, AL. Then, during the early 1970s, the firm ceased production of rayon staple fiber and cuprammonium rayon filament yarn, and consolidated viscose rayon filament yarn production in Elizabethton.

Beaunit sold out to officers of the company in the late 1970s, and these officers sold out to the employees in 1985. Hourly employees hold a 70-percent ownership share, ***.⁵⁷ North American Rayon (NARCO), the successor to Beaunit, produced textile and industrial rayon yarn throughout the period of investigation. It commenced test production of carbonized rayon yarn in 1989. The petitioner is the only current U.S. producer of rayon filament yarn.⁵⁸

Avtex Fibers, Inc.

A British firm, Courtaulds Ltd., introduced rayon to the U.S. market in 1910, with the establishment, in Marcus Hook, PA, of the Viscose Co., later renamed American Viscose Corp. In 1941, the British Government pledged the company's assets to U.S. bankers for munitions financing, under the U.S.-U.K. lend-lease agreements. These assets were subsequently sold and American Viscose operated as a private company until 1963, when it was acquired by FMC Corp. Like Beaunit, in the face of declining demand, FMC closed several rayon production facilities in the early 1970s.

Avtex Fibers (Avtex), a newly formed, privately held company, purchased the bulk of the assets of FMC Corp.'s Fiber Division in 1976. These assets included rayon production plants in Nitro, WV, Parkersburg, WV, and Front Royal, VA. Industrial rayon yarn was only produced in the latter facility. Avtex continued to consolidate, eventually shifting production entirely to the Front Royal location.

Avtex produced industrial rayon yarn until October 1988, when the plant was forced to shut down by the State of Virginia after failing to meet pollution-control standards. The firm had produced textile, industrial, and carbonized rayon yarn. Because there was no other U.S. producer of carbonized

⁵⁶ Background information on the producers was available from past Commission reports on rayon products.

⁵⁷ ***.

⁵⁸ There are two U.S. producers of rayon staple fiber.

rayon yarn at the time, the U.S. Government provided the financial assistance necessary for the plant to resume production solely of this product, which it did from December 1988 to November 1989. Avtex filed for protection under chapter 11 of the U.S. Bankruptcy Code in February 1990, and is currently involved in the sale of assets under a court-appointed trustee. The petitioner provided an estimate of Avtex's 1988 production of industrial rayon yarn; however, further information is not available. Avtex is believed to have been the *** U.S. producer of industrial rayon yarn in 1988.

U.S. Importers

The petitioner identified six potential importers of the subject product, including the U.S. subsidiary of the foreign producer, three end users, and two converters/distributors. ***.⁵⁹ Akzo, headquartered in Conyers, GA, is a wholly owned subsidiary of Akzo America, Inc., New York, NY, which is in turn a wholly owned subsidiary of Akzo N.V.⁶⁰ From 1929 to 1975, Akzo N.V. was also involved in U.S. industrial rayon yarn production.⁶¹ Akzo N.V. reportedly commenced exporting the subject product upon the shutdown of its U.S. facility.⁶²

Apparent U.S. Consumption

The data presented in table 3 represent U.S. shipments of the product by all known producing and importing firms.⁶³ These data show steady decreases in both the quantity and value of U.S. consumption of industrial rayon yarn. Both the petitioner and respondent parties noted that conditions of general recession, including, specifically, declines in the automotive and durable goods sectors, have contributed to decreased consumption of the product.⁶⁴ Also, according to respondents, some shifting to substitutes occurred as a result of the Avtex shutdown, which would also have contributed to downturn in demand.

⁵⁹ ***. See the discussion in the section of this report entitled "U.S. tariff treatment."

⁶⁰ Prior to July 1, 1991, Akzo B.V. was known as Enka B.V.; Akzo was Enka America, Inc.; and Akzo Faser A.G. was Enka A.G. The firms have been referred to by these former names in testimony.

⁶¹ Akzo held a controlling interest in American Enka, a producer of rayon staple fiber and rayon filament yarn. U.S. International Trade Commission, Rayon Staple Fiber from Sweden (inv. No. 104-TAA-13), USITC publication 1360 (Mar. 1983), p. A-9.

⁶² Transcript, p. 66.

⁶³ Data for Avtex were estimated by the staff based on information provided by the petitioner.

⁶⁴ Transcript, petitioner at p. 17 and respondent at p. 71.

Table 3

Industrial rayon yarn: U.S. shipments by producers and importers and apparent U.S. consumption, 1988-90, January-June 1990, and January-June 1991

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>January-June--</u>	
	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Neither the Commission staff nor the parties to the investigations were able to identify public data on overall U.S. consumption of industrial rayon yarn. However, limited data were available on rayon tire cord fabric production, which accounted for an estimated *** percent of industrial rayon yarn consumption in 1990. These data, which show a steady decline in consumption, *** those reported by NARCO and Akzo for their U.S. shipments to tire producers (table 4). As a percent of the U.S. tire cord market, rayon has declined from 1.4 percent in 1988 to a projected 0.4 percent in 1991.

Table 4

Tire cord fabric: U.S. shipments, by type of material, 1988-91

(In thousands of pounds)

<u>Material</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991¹</u>
Steel.....	211,409	312,150	355,457	369,766
Polyester.....	165,490	186,357	182,926	174,104
Nylon.....	198,625	168,668	162,622	163,144
Rayon.....	8,989	(²)	(²)	2,862
Glass.....	2,828	1,920	1,123	758
Cotton.....	0	(²)	(²)	0
Other.....	62,549	13,877	12,885	12,224
Total.....	649,800	688,413	718,144	722,858

¹ Annualized on the basis of reported January-June data.

² Data not disclosed. Rayon is believed to account for the bulk of the derived cotton and rayon total, which was 5.4 million pounds in 1989 and 3.1 million pounds in 1990.

Source: CIR Census, conversation with agency official, September 25, 1991.

Channels of Distribution and Purchasers

NARCO and Akzo compete directly for sales to tire manufacturers. In the United States, additional processing of tire cord yarn is performed by the tire producer. Specific tire-manufacturer purchasers named in the petition

are Goodyear, Akron, OH; Uniroyal Goodrich, Akron, OH; and Michelin Tire Corp. (Michelin), Greenville, SC.

Other major end users of industrial rayon yarn are industrial hose producers. These purchasers often require additional processing of the yarn. Both NARCO and converters further treat industrial yarn by coating (adding finishes) and rewinding it to customer specifications. The imported product is sold without finish to converters who perform these operations. Thus, NARCO competes directly with converters, and only indirectly with Akzo, in this market. Specific converter/purchasers named in the petition and at the conference are Beaver, Mansfield, GA, and Bibb, Atlanta, GA.

NARCO and Akzo reported 1990 shipments to various channels of distribution and purchasers as presented in table 5. As shown, ***; however, an official of Beaver testified at the conference that his firm purchased from NARCO during 1988-89.

Table 5

Industrial rayon yarn: U.S. shipments by NARCO and Akzo, by channel of distribution and by purchaser, 1990

<u>Channel of distribution and purchaser</u>	<u>NARCO</u>		<u>Akzo</u>	
	<u>Quantity</u> (1,000 lb)	<u>Value</u> (\$1,000)	<u>Quantity</u> (1,000 lb)	<u>Value</u> (\$1,000)
*	*	*	*	*
*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The information presented in this section of the report is based on the questionnaire response of NARCO, the only producer of industrial rayon yarn during most of the period of investigation. Data were not available for Avtex, which is believed to have been *** domestic producer of industrial rayon yarn prior to its abrupt shutdown in October 1988. Avtex's 1988 shipments are (conservatively) estimated at ***. When it shut down, some of its customers switched to NARCO. As shown in this section, NARCO expanded its industrial rayon yarn production and sales from 1988 to 1989; however, this increase is largely because of the demise of Avtex. The industry as a whole sustained decreases in most if not all production and shipment indexes from 1988 to 1989.

U.S. Production, Capacity, and Capacity Utilization

Because of the nature of the production process, NARCO produces industrial rayon yarn *** hours a day, *** days a week, *** weeks a year. ***.

Company officials reported that, following the sudden shutdown of Avtex in late October 1988, NARCO had *** operational and *** mothballed production lines. The company was able to put *** mothballed lines into production by *** and an additional *** lines by ***. ***.

*** industrial rayon yarn production lines remain operational, although the firm has actually only used *** lines since 1990. ***. Capacity, as reported in the questionnaire and presented in table 6, represents ***. Capacity is, therefore, believed to represent actual short-run production capability of the firm.

Table 6
Industrial rayon yarn: NARCO's average-of-period capacity, production, and capacity utilization, 1988-90, January-June 1990, and January-June 1991

<u>Item</u>	<u>January-June--</u>				
	1988	1989	1990	1990	1991
*	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Production and capacity increased from 1988 to 1989 as NARCO picked up a portion of Avtex's business; ***. Capacity, production, and capacity utilization all fell from 1989 to 1990. ***.

U.S. Producer's Shipments

NARCO reported *** company transfers and *** exports.⁶⁵ U.S. shipments and trends are presented in table 7. The trends in quantity and value are similar to that for production--increasing from 1988 to 1989 and decreasing thereafter. The unit value of shipments ***. ***.

⁶⁵ Respondents have argued that NARCO's industrial rayon yarn does not meet international standards. (Transcript, p. 74.) ***. (Conversation with company officials, Sept. 23, 1991.)

Table 7

Industrial rayon yarn: NARCO's U.S. shipments, 1988-90, January-June 1990, and January-June 1991

<u>Item</u>	<u>January-June--</u>				
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S. Producer's Inventories

NARCO's inventory levels also followed production, increasing from 1988 to 1989⁶⁶ and decreasing thereafter. As a percent of total shipments, they ***, as shown in the following tabulation:

<u>Item</u>	<u>As of December 31--</u>			<u>As of June 30--</u>	
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>

* * * * *

* * * * *

U.S. Employment

NARCO is an employee-owned company. About *** of the total workforce is employed in industrial rayon yarn production. These employees are represented by the United Textile Workers of America. The number of workers, hours worked, wages paid, and total compensation paid all increased from 1988 to 1989 and decreased thereafter (table 8). Productivity *** during the period of investigation. Hourly wages increased by *** percent overall while hourly total compensation increased by *** percent. During January-June 1991, nonwage compensation accounted for *** of total compensation. Unit labor costs *** during the period of investigation.

⁶⁶ Avtex's sudden shutdown in late October 1988 created a temporary shortage of product in the U.S. market. ***.

Table 8

Industrial rayon yarn: Average number of production and related workers employed by NARCO, hours worked¹ and wages and total compensation paid to such employees, hourly wages and total compensation, productivity, and unit labor costs, 1988-90, January-June 1990, and January-June 1991

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>January-June--</u>	
				<u>1990</u>	<u>1991</u>
*	*	*	*	*	*

¹ Includes paid sick leave, holidays, and vacation.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

NARCO reported ***. Company officials noted that, because the employees are the owners of the company, ***. ***.

U.S. Producer's Financial Experience

NARCO provided full financial data on its industrial rayon yarn operations but only very limited data on its overall establishment operations. Industrial rayon yarn accounts for approximately *** percent of net sales. Overall establishment operations *** the petitioner's experience with regard to its industrial-grade product line.⁶⁷

Income-and-Loss Data

Income-and-loss data on the U.S. producer's industrial rayon yarn operations are presented in table 9.⁶⁸ NARCO had a substantial change in ownership in 1985 when the employees purchased the stock of the corporation through an employee stock option plan (ESOP). ***.

⁶⁷ Conversation with company official, Oct. 1, 1991.

⁶⁸ ***.

Table 9

Income-and-loss experience of NARCO on its industrial rayon yarn operations, fiscal years 1988-90,¹ January-June 1990, and January-June 1991

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>January-June--</u>	
	*	*	*	*	*

¹ NARCO's fiscal yearend is September 30.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

***. The per-unit *** in raw material costs and factory overhead may be observed in table 10.

Table 10

Industrial rayon yarn: Per-unit costs of raw materials, direct labor, and factory overhead, fiscal years 1988-90,¹ January-June 1990, and January-June 1991

<u>Item</u>	<u>Per-pound cost</u>					<u>January-June--</u>	
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>		
	*	*	*	*	*	*	*

¹ NARCO's fiscal yearend is September 30.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Information supplied by NARCO on its raw materials costs indicate *** during the period of investigation. ***.

The respondents have asserted that NARCO's profitability problems relate to increased environmental costs. ***, as shown in the following tabulation (in thousands of dollars):

<u>Item</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>January-June--</u>	
	*	*	*	*	*

***; however, a 1991 report on NARCO's effluent toxicity suggests that industrial rayon yarn production is more of a pollutant than are either textile or carbonized yarn production.⁶⁹ In any case, ***. ***.

Investment in Productive Facilities

The value of NARCO's fixed assets used in its production of industrial rayon yarn is presented in the following tabulation (in thousands of dollars):

<u>Value of fixed assets</u>	<u>As of September 30--</u>			<u>As of June 30--</u>	
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>
*	*	*	*	*	*

***.

Capital Expenditures

The capital expenditures reported by NARCO for its industrial rayon yarn operations are presented in the following tabulation (in thousands of dollars):

<u>Capital expenditures</u>	<u>January-June--</u>				
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>
*	*	*	*	*	*

Research and Development Expenses

NARCO's industrial rayon yarn research and development expenses are presented in the following tabulation (in thousands of dollars):

<u>Item</u>	<u>January-June--</u>				
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>
*	*	*	*	*	*

Capital and Investment

The Commission requested the U.S. producer to describe any actual or potential negative effects of the subject imports on the firm's growth, investment, ability to raise capital, and production efforts. The responses are presented in appendix C. ***.⁷⁰

⁶⁹ Respondents' postconference brief, ex. 7 at p. 24.

⁷⁰ Conversation with company official, Sept. 23, 1991.

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors⁷¹--

- (I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),
- (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
- (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
- (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
- (V) any substantial increase in inventories of the merchandise in the United States,
- (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
- (VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
- (VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to

⁷¹ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

final orders under section 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.⁷²

Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of alleged material injury to an industry in the United States." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations (including the potential for product-shifting) (items (II), (VI) and (VIII)); and other applicable threat indicators (item (VII)); follows. Other threat indicators have not been alleged⁷³ or are otherwise not applicable.

U.S. Inventories of the Subject Product

Akzo reported no inventories and no shipments of industrial rayon yarn from the Netherlands. During 1988-90, Akzo's end-of-period inventories of

⁷² Section 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

⁷³ In response to a telegram from the Commission, the U.S. Embassy in Bonn advised of an "underselling" fine levied on Akzo N.V. by the European Court in July 1991. Counsel for respondents informed the Commission that this action resulted from a review of an antitrust judgement against Akzo in 1985 that involved sales of benzoyl peroxide. (Letter from Tom Schaumberg to Rebecca Woodings dated Oct. 3, 1991.)

industrial rayon yarn from Germany ***.⁷⁴ Then, *** from June 30, 1990 to June 30, 1991. ***. Akzo's inventories and inventories-to-shipments ratios of the subject imports from Germany are presented in the following tabulation:

<u>Item</u>	<u>As of December 31--</u>			<u>As of June 30--</u>	
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>
*	*	*	*	*	*

**Ability of the Foreign Industries to Generate Exports
and the Availability of Export Markets other than the United States**

Germany

Akzo A.G., Wuppertal, Germany, is a wholly owned subsidiary of Akzo N.V., Arnhem, the Netherlands. Akzo A.G. produces industrial rayon yarn at facilities in Obernburg and Oberbruch, Germany. The combined actual 1988-90 and projected 1991 data show *** (table 11). ***.⁷⁵ The U.S. market accounted for *** percent of total shipments in any period. The home market is ***, accounting for *** percent of shipments.

Table 11

Industrial rayon yarn: German capacity,¹ production, capacity utilization, home-market shipments,² exports to the United States and other markets, and end-of-period inventories, actual 1988-90, January-June 1990, and January-June 1991, and projected 1991-92

<u>Item</u>	<u>Quantity (in metric tons, except as noted)</u>					
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991³</u>	<u>1992³</u>	<u>January-June--</u>
						<u>1990</u>
*	*	*	*	*	*	*

¹ Based on facilities operating *** hours a week, *** weeks a year.

² Includes yarn consumed internally in the production of tire cord and tire cord fabric, which accounts for somewhat less than *** of home-market shipments.

³ Projected.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

⁷⁴ Avtex's sudden shutdown in late October 1988 created a temporary shortage of product in the U.S. market. ***.

⁷⁵ Avtex's sudden shutdown in late October 1988 created a temporary shortage of product in the U.S. market and ***. ***.

The Netherlands

Akzo B.V. is also a wholly owned subsidiary of Akzo N.V. Akzo B.V. produces industrial rayon yarn at its parent's headquarters location in Arnhem, the Netherlands. During 1988-90, *** (table 12).⁷⁶ ***. Akzo B.V. reported no exports of industrial rayon yarn from the Netherlands to the United States (including through a third country) during the period of investigation and ***.

Table 12

Industrial rayon yarn: Dutch capacity,¹ production, capacity utilization, home-market shipments,² exports to the United States and other markets, and end-of-period inventories, actual 1988-90, January-June 1990, and January-June 1991, and projected 1991-92

<u>Item</u>	<u>Quantity (in metric tons, except as noted)</u>						<u>January-June--</u>
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991³</u>	<u>1992³</u>	<u>1990</u>	<u>1991</u>
*	*	*	*	*	*	*	*

¹ Based on facilities operating *** hours a week, *** weeks a year.

² Includes yarn consumed internally in the production of tire cord and tire cord fabric, which accounts for *** of home-market shipments.

³ Projected.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

**CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS
OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY**

U.S. Imports of the Subject Product

The primary source of data on U.S. imports of the subject product, as presented in this report, is the questionnaire response of Akzo, believed to be the *** importer of the subject product from either Germany or the Netherlands during the period of investigation. In support of its questionnaire data, Akzo provided copies of Customs Form 7501 for *** of its *** entries of the subject product during this entire period.⁷⁷ A sample of this documentation is presented in appendix D. According to the 7501s, the vast majority of Akzo's imports of the subject product were misclassified by the firm's customs broker and entered under HTS subheading 5403.39.00

⁷⁶ Home-market shipments consist ***.

⁷⁷ Counsel for Akzo reported that the remainder of the invoices had not been located as of Oct. 3, 1991.

(statistical reporting number 5403.39.0020).⁷⁸ Only a small amount of product, which was cleared by another customs broker, appears to have been properly classified. For this reason, the importer's questionnaire data are believed to be the most accurate and reliable source of information on the subject imports.

As reported by Akzo and presented in table 13, imports from Germany ***.⁷⁹ ***. The reported quantities imported by Akzo from Germany *** to the quantities reported exported by Akzo A.G. Data collected under HTS statistical reporting number 5403.39.0020 for Germany and presented in table 14, which are not known to include a significant quantity of nonsubject products, also generally corroborate the data reported by Akzo.

Table 13
Industrial rayon yarn: Akzo's imports from Germany, 1988-90, January-June 1990, and January-June 1991

<u>Item</u>	<u>January-June--</u>				
	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>
*	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 14
Industrial rayon yarn: U.S. imports under HTS statistical reporting number 5403.39.0020¹ from Germany, 1989-90, January-June 1990, and January-June 1991

<u>Item</u>	<u>January-June--</u>				
	<u>1989</u>	<u>1990</u>	<u>1990</u>	<u>1991</u>	
*	*	*	*	*	*

¹ Includes some product properly classified under HTS statistical reporting number 5403.10.3040 as reported by Akzo.

Source: Compiled from official statistics of the U.S. Department of Commerce, supplemented by data provided by respondents.

⁷⁸ The Commission staff contacted Customs to verify the alleged misclassification of the subject product. *** did not verify the allegation. He explained, however, that Customs would not have caught a misclassification by the customs broker since the tariff rates were the same.

⁷⁹ Avtex's sudden shutdown in late October 1988 created a temporary shortage of product in the U.S. market and ***. Increases in imports into the United States from 1988 to 1989 are at least partially explained by the need to *** supply former Avtex customers. See also transcript, p. 75.

Akzo reported no imports from the Netherlands. Although official import data for HTS statistical reporting number 5403.39.0020 showed a small quantity of goods from the Netherlands, Akzo provided customs forms indicating that these imports were of products other than industrial rayon yarn.⁸⁰ Also, the invoices submitted identify the country of origin of the subject imports to be Germany.

U.S. Market Penetration by the Subject Imports

Calculated market shares show a substantial increase in the market penetration of the subject imports over the period of investigation, and a corresponding loss of market share by the U.S. industry (table 15).⁸¹

Table 15
Industrial rayon yarn: Apparent U.S. consumption and market shares of U.S.
producers and imports of the subject product,¹ 1988-90, January-June 1990, and
January-June 1991

Item	<u>January-June--</u>				
	1988	1989	1990	1990	1991
*	*	*	*	*	*

¹ Available information on nonsubject imports suggests that both the quantities and values are very small.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Prices

Marketing Practices

The price of industrial rayon filament yarn depends primarily on the denier, tenacity, amount of twist (measured in TPI), whether an after-finish is applied, and to some extent the type of package.

* * * * * * * * 82, 83, 84

80 ***

⁸¹ Avtex's sudden shutdown in late October 1988 created a temporary shortage of product in the U.S. market and ***. Increases in import penetration from 1988 to 1989 are at least partially explained by expanded business opportunities for the importer. See also transcript, p. 75.

82 ***

83 ***

84 ***

Sales terms ***. ***.⁸⁵ Order lead times of the U.S. producer and the importer are ***.

* * * * * * * *⁸⁶

Transportation and Packaging

The U.S. producer ***.⁸⁷ On the other hand, the importer ***.⁸⁸

* * * * * * * *⁸⁹

The producer and importer reported U.S. freight costs that reflect ***.
***.

* * * * * * * *⁹⁰

Questionnaire Price Data

The Commission requested quarterly pricing data during January 1989-June 1991 for the three industrial rayon yarn products described below.⁹¹ All three products are high-tenacity (4-6 grams/denier) filament yarn of viscose rayon made from high-alpha cellulose, with a twist of 2-4 turns per inch (or equivalent if in meters).

PRODUCT 1: High-tenacity rayon filament yarn, 1650 denier with spin-finish, but no after-finish.

PRODUCT 2: High-tenacity rayon filament yarn, 2200 denier with spin-finish, but no after-finish.

PRODUCT 3: High-tenacity rayon filament yarn, 2200 denier with after-finish.

The price data were requested on a net U.S. f.o.b. and delivered price basis for the responding firm's largest sale and total quarterly sales. The U.S. producer provided the requested price data for all three specified products and also provided price data for the 1650 denier yarn with an after-finish. All the reported U.S.-produced products were "super 2" yarn. The

⁸⁵ ***.

⁸⁶ ***.

⁸⁷ ***.

⁸⁸ ***.

⁸⁹ ***.

⁹⁰ ***.

⁹¹ The petitioner and importer provided the product descriptions during preparation of the questionnaires and indicated that these three industrial rayon yarn products constituted a large share of U.S. consumption of the subject product and were representative of the competition between U.S.-produced and the subject imported industrial rayon yarn. ***. (Conversations with company officials, Sept. 11, 1991).

U.S. importer provided the requested price data for only products 1 and 2 imported from Germany,⁹² with separate prices for its "super 2" and "super 3" products 1 and 2. ***.⁹³ ***.

The price information provided by the U.S. producer for products 1-3 accounted for *** percent by weight of total domestic shipments of U.S.-produced industrial rayon yarn during January 1989-June 1991.⁹⁴ The price information provided by the importer for products 1 and 2 accounted for *** percent by weight of reported U.S. imports of the industrial rayon yarn from Germany.

The importer indicates that its "super 2" products 1 and 2 have the same strength characteristics as those of the U.S. producer, but the imported products have ***.⁹⁵ The importer asserts that its "super 3" products 1 and 2 are 13 percent stronger than either the U.S. "super 2" products 1 and 2, or the imported "super 2" products 1 and 2.⁹⁶ The importer reported that during 1990 more than 70 percent of its U.S. sales of the imported German industrial rayon yarn were the "super 3" type and the remainder were the "super 2" type.

Price trends

Price trends of the U.S.-produced and imported German industrial rayon yarn are based on net f.o.b. selling prices of the U.S. producer and net U.S. delivered selling prices of the importer that were reported in questionnaire responses.⁹⁷ Quarterly selling prices of the specified industrial rayon yarn products are shown in table 16 for sales of the domestic products and table 17 for sales of the products imported from Germany.

Quarterly prices of the U.S.-produced and subject imported German industrial rayon yarn products *** over the period January 1989-June 1991, ***.⁹⁸

⁹² Akzo reported that the firm does not import any of the subject industrial rayon yarn with an after-finish nor does it import any industrial rayon yarn from the Netherlands.

⁹³ ***.

⁹⁴ ***.

⁹⁵ ***.

⁹⁶ ***. (Conversation with company officials, Sept. 23, 1991).

⁹⁷ ***.

⁹⁸ ***.

Table 16

Net f.o.b. selling prices and quantities of U.S.-produced industrial rayon yarn, by specified product and by quarter, January 1989-June 1991¹

	<u>Product 1</u>		<u>Product 2</u>		<u>Product 3</u>	
<u>Period</u>	<u>Price</u> <u>(Per lb)</u>	<u>Quantity</u> <u>(1,000 lb)</u>	<u>Price</u> <u>(Per lb)</u>	<u>Quantity</u> <u>(1,000 lb)</u>	<u>Price</u> <u>(Per lb)</u>	<u>Quantity</u> <u>(1,000 lb)</u>
	*	*	*	*	*	*

1 ***

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table 17

Net delivered selling prices and quantities of industrial rayon yarn imported from Germany, by specified product and by quarter, January 1989-June 1991¹

— * —

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

U.S.-produced. . .

Imported. . .

* * * * *

99 ***

100 ***

¹⁰¹ Conversation with company officials Sept. 20, 1991.

102 ***. (Conversations with company representatives, Oct. 1 and 4, 1991, respectively.)

spective
103

104

104 ***.

Price comparisons

Quarterly price comparisons between U.S.-produced industrial rayon yarn and the products imported from Germany were developed from net delivered and net f.o.b. prices that were reported in the questionnaires by NARCO and Akzo (table 18).¹⁰⁶ ***.¹⁰⁷

Table 18

Margins of under/overselling¹ between U.S.-produced industrial rayon yarn and that imported from Germany, by product and by quarter, January 1989-June 1991²

Period	(In percent)							
	U.S. and German "super 2" yarn		U.S. "super 2" and German "super 3" yarn		Product 1	Product 2	Product 1	Product 2
	Product 1	Product 2	Product 1	Product 2				
*	*	*	*	*	*	*	*	*

¹ The percentage price differences between the U.S. and imported German products were calculated as differences from the U.S. producer's price. Figures in parentheses indicate that the price of the imported product was higher than the price of the domestic product.

² Margins of under/overselling were developed from quarterly ***. ***. Because of the differences in the way pricing data were reported, the prices on which margins of under/overselling were developed are shown in appendix table E-2; some of the data shown in tables 16 and 17 are replicated in table E-2.

Note: Percentage margins are calculated from the unrounded prices.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

* * * * * * * * *¹⁰⁸

Exchange Rates

Quarterly data reported by the International Monetary Fund for Germany and the Netherlands indicate that values of the reported currencies appreciated in real terms for both countries relative to the U.S. dollar during January 1989-March 1991.¹⁰⁹ Exchange rate changes for the 2 countries are shown in table 19 and discussed below.

¹⁰⁶ ***.

¹⁰⁷ ***.

¹⁰⁸ The German "super 3" products have higher breaking strength than the domestic and German "super 2" products. ***.

¹⁰⁹ International Financial Statistics, June 1991.

Table 19

Exchange rates:¹ Indexes of the nominal and real exchange rates between the U.S. dollar and the currencies of Germany and the Netherlands, and indexes of producer prices in the foreign countries and the United States,² by quarter, January 1989-June 1991

Period	Germany			The Netherlands			
	Nominal exchange- rate index	Producer price index	Real exchange- rate index ³	Nominal exchange- rate index	Producer price index	Real exchange- rate index ³	U.S. producer price index
1989:							
Jan.-Mar...	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June..	95.6	100.8	94.7	95.8	101.2	95.2	101.8
July-Sept..	96.1	101.0	95.7	96.2	101.2	96.0	101.4
Oct.-Dec...	102.0	101.7	102.0	102.0	101.4	101.7	101.8
1990:							
Jan.-Mar...	109.4	101.8	107.9	109.5	101.2	107.4	103.3
Apr.-June..	110.2	102.4	109.5	110.5	101.6	108.9	103.1
July-Sept..	116.1	102.9	113.9	116.3	102.5	113.6	104.9
Oct.-Dec...	123.2	103.5	117.9	123.3	102.6	117.0	108.1
1991:							
Jan.-Mar...	120.8	104.0	118.6	120.9	102.8	117.5	105.9
Apr.-June..	106.6	104.7	106.4	106.8	103.0	105.0	104.8

¹ Based on exchange rates expressed in U.S. dollars per unit of foreign currency.

² The producer price indexes are aggregate measures of inflation at the wholesale level in the United States and the above foreign countries. As a result, these indexes only approximate actual price changes of industrial rayon yarn in the United States and the subject foreign countries. Quarterly producer prices in the United States fluctuated but rose, by 4.8 percent, during January 1989-June 1991, while producer prices in Germany and the Netherlands increased by 4.7 percent and 3 percent, respectively.

³ The real values of the foreign currencies are the nominal values adjusted for the difference between inflation rates as measured by the producer price indexes in the individual foreign countries and the United States.

Note.--January-March 1989=100.0

Source: International Monetary Fund, International Financial Statistics, September 1991.

Germany

The nominal value of the German mark appreciated relative to the U.S. dollar by 6.6 percent during January 1989-June 1991. Similar rates of inflation in Germany and the United States during this period, of 4.7 and 4.8 percent, respectively, resulted in a similar real appreciation of the German mark against the U.S. dollar (6.4 percent).

The Netherlands

The nominal value of the Netherlands guilder appreciated relative to the U.S. dollar by 6.8 percent during January 1989-June 1991. Somewhat lower inflation of 3 percent in the Netherlands during this period compared with 4.8 percent inflation in the United States resulted in less appreciation of the guilder in real terms (5.0 percent).

Lost Sales

Lost Revenues

110 ***

111 ***.

112 ***

113

114 *

114 ***.

115 ***.



B-1

APPENDIX A

FEDERAL REGISTER NOTICES

subheading 5403.10.30 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by October 21, 1991.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 6, 1991.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-205-3192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 6, 1991, by North American Rayon Corp., Elizabethton, TN.

Participation in the Investigations and Public Service List

Persons (other than the petitioner) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the *Federal Register*. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-530 and 531 (Preliminary)]

High-Tenacity Rayon Filament Yarn from Germany and the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-530 and 531 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and the Netherlands of high-tenacity rayon filament yarn,¹ provided for in

¹ For purposes of these investigations, high-tenacity rayon filament yarn is defined as multifilament single yarn of viscose rayon with twist of 5 turns or more per meter, having a denier of 1.100 or greater and a tenacity greater than 35 centinewtons per tex.

(7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on September 27, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Rebecca Woodings (202-205-3192) not later than September 25, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 2, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 10, 1991.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 91-22127 Filed 9-12-91; 8:45 am]
BILLING CODE 7020-02-M

(A-428-810 Germany; A-421-802 The Netherlands)

Initiation of Antidumping Duty Investigations: High-Tenacity Rayon Filament Yarn From Germany and The Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: October 2, 1991.

FOR FURTHER INFORMATION CONTACT: Edward Easton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1777.

INITIATIONS:

The Petition

On September 6, 1991, we received a petition filed in proper form by the North American Rayon Corporation, the only producer of high-tenacity rayon filament yarn in the United States. Petitioners submitted supplementary information on September 19, 1991, and September 25, 1991, in compliance with the filing requirements of the Department's regulations (19 CFR 353.12). Petitioner alleges that imports of high-tenacity rayon filament yarn from Germany and The Netherlands are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from Germany and/or The Netherlands of high-tenacity rayon filament yarn. Petitioner also alleges that critical circumstances, as defined under 19 CFR 353.16, exist with respect to high-tenacity rayon filament yarn from Germany and The Netherlands.

Petitioner stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register

support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) on price quotations obtained from certain of its U.S. customers which also purchased the subject merchandise from Germany and The Netherlands. The prices petitioner obtained were quoted on a delivered basis. Petitioner adjusted USP to account for U.S. inland freight, ocean freight, marine insurance, port charges, U.S. duty, foreign inland freight, and further processing where applicable. Petitioner, however, did not provide any information that these prices included services by converters; therefore, the Department recalculated USP to remove adjustments for converter margins, converter value-added, and inland freight for delivery to converters.

Petitioner claims that home market and third-country prices cannot be used as a basis for estimating foreign market value because these prices are below the cost of production for AKZO Chemie Verkoopkantoor N.V. ("AKZO"), the company that allegedly exports all of the subject merchandise to the United States from both Germany and The Netherlands. Therefore, petitioner based foreign market value on constructed value pursuant to section 773(e)(1) of the Act. Petitioner's estimate of constructed value consists of the cost of manufacture, credit expenses, research and development, selling, general and administrative expenses (SG&A), profit and packing. In an amendment to the petition filed September 19, 1991, petitioner changed the profit rate to reflect the statutory minimum of eight percent of the cost of materials, fabrication and general expenses, and derived an SG&A rate based on AKZO's 1990 consolidated financial statements.

To the extent that AKZO's company-specific costs were available, petitioner included them in the calculation of the constructed value. For example, petitioner's computation of constructed value included data on AKZO's cost of pulp (the major input material), depreciation expenses, and SG&A. For other components of constructed value,

petitioner adjusted its own cost of manufacture for known differences in Germany and The Netherlands, and added both packing and the statutory minimum of eight percent profit.

The Department recalculated constructed value by adjusting petitioner's estimates for SG&A, credit expenses, and depreciation. SG&A was recomputed from AKZO's consolidated financial statements in accordance with Department practice. In the absence of company-specific information on AKZO's actual credit expenses, the Department excluded the adjustment for credit expenses that petitioner used to calculate constructed value. Depreciation was recalculated by using petitioner's own costs because the methodology employed by the petitioner was not specifically applicable to the production of the subject merchandise.

Based on a comparison of USP and FMV, petitioner alleges dumping margins ranging from 209.40 to 223.63 percent for subject imports from Germany, and from 205.04 to 262.25 percent for subject imports from The Netherlands. Based on our recalculation of both USP and constructed value as described above, we recalculated estimated margins ranging from 155.62 to 187.25 percent for Germany, and 199.30 to 209.10 percent for The Netherlands.

Initiation of Investigations

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after the petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegation.

We have examined the petition on high-tenacity rayon filament yarn from Germany and The Netherlands and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of high-tenacity rayon filament yarn from Germany and The Netherlands are being, or are likely to be, sold in the United States at less than fair value.

Petitioner's analysis provides reasonable grounds to believe or suspect that AKZO has made sales in the home market and to third countries at prices below the cost of production. Specifically, petitioner has compared AKZO-specific prices to the cost of production which included AKZO-specific costs. Therefore, pursuant to

section 773(b) of the Act, we are initiating an investigation to determine whether home market sales (or third country sales in the event that we determine that the home market is not viable) are made at prices below the cost of production.

If our investigations proceed normally, we will make our preliminary determinations by February 13, 1992.

Scope of Investigations

The product covered by these investigations is high-tenacity rayon filament yarn. It is defined as multifilament single yarn of viscose rayon with a twist of five turns or more per meter, having a denier of 1100 or greater, and a tenacity greater than 35 centinewtons per tex. This merchandise is classified by the Harmonized Tariff Schedule (HTS) under HTS item 5403.10.3040. The HTS reference is provided for convenience and customs purposes. The written description remains dispositive as to the scope of product coverage.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of these actions and to make available to it the information we used to arrive at these determinations. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determinations by ITC

The ITC will determine by October 21, 1991, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and/or The Netherlands of high-tenacity rayon filament yarn. If its determinations are negative, these investigations will be terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

49880

Federal Register / Vol. 56, No. 191 / Wednesday, October 2, 1991 / Notices

Dated: September 26, 1991.

Marjorie A. Chorlins,

*Acting Assistant Secretary for Import
Administration.*

[FR Doc. 91-23727 Filed 10-1-91; 8:45 am]

BILLING CODE 3510-09-M

APPENDIX B

CALENDAR OF THE PUBLIC CONFERENCE

CALENDAR OF THE PUBLIC CONFERENCE

Those persons listed below appeared at the U.S. International Trade Commission's public conference in the subject investigations:

Subject: Investigations. Nos. 731-TA-530 and 531--High-tenacity rayon filament yarn from Germany and the Netherlands

Date and time: September 27, 1991, 9:30 a.m.

The conference was held in the Main Hearing Room (room 101) of the U.S. International Trade Commission, 500 E Street, SW., Washington, DC.

In support of the imposition of antidumping duties:

North American Rayon Corp.

Witnesses:

Charles Green, President and CEO, North American Rayon

Richard Reagan, Vice President, Sales and Marketing, North American Rayon

Mark W. Love, Vice President, Economic Consulting Services, Inc. (ECS)

Daniel C. Cannistra, Senior Economist, ECS

In opposition to the imposition of antidumping duties:

Adduci, Mastriani, Meeks & Schill

Tom M. Schaumberg)--OF COUNSEL
Barbara A. Murphy)

William O. Weiss, Senior Vice President/Law and General Counsel,
Akzo America, Inc.

on behalf of:

Akzo Fibers, Inc.,
Akzo Faser A.G., and
Akzo Fibers B.V.

Witnesses:

Lowell D. Bivens, General Manager, Industrial Fibers Business Group,
Akzo Fibers

Edward Needham, President and CEO, Beaver Manufacturing Co.

Goodyear Tire & Rubber Co.

Gary Kruger--OF COUNSEL

Witness:

Dennis Brandyberry, Manager, Tire Reinforcement Science & Technology,
Goodyear Tire & Rubber Co.

APPENDIX C

IMPACT OF IMPORTS ON NARCO'S GROWTH, INVESTMENT,
ABILITY TO RAISE CAPITAL, AND EXISTING DEVELOPMENT
AND PRODUCTION EFFORTS



NARCO's responses to each of three questions are presented below:

1. Since January 1, 1988, has your firm experienced any actual negative effects on its growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced product, as a result of imports of high-tenacity rayon filament yarn from Germany or the Netherlands?

* * * * *

2. Does your firm anticipate any negative impact of imports of high-tenacity rayon filament yarn from the subject countries?

* * * * *

3. Has the scale of capital investments undertaken been influenced by the presence of imports of the subject merchandise from the subject countries?

* * * * *

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APPENDIX D

IMPORT DOCUMENTATION SUBMITTED BY AKZO

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APPENDIX E

NARCO'S COSTS OF WOOD PULP AND CAUSTIC SODA
AND THE REPORTED DELIVERED AND F.O.B. SELLING PRICES OF NARCO
AND AKZO THAT WERE USED TO DEVELOP MARGINS OF UNDER/OVERSELLING

Table E-1

NARCO's costs of wood pulp¹ and caustic soda used by the firm to produce its industrial rayon yarn, by quarter, January 1989-June 1991²

<u>Period</u>	<u>Wood pulp</u>			<u>Caustic soda</u>		
	Cost per metric ton purchased	Cost per pound of industrial material of material purchased	<u>yarn produced</u>	Cost per short ton purchased	Cost per pound of industrial material purchased	<u>yarn produced</u>
*	*	*	*	*	*	*

¹ ***, the high-alpha wood pulp used to produce industrial rayon yarn.

² ***.

Note: January-March 1989=100.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Table E-2

U.S. selling prices of industrial rayon yarn produced in the United States and imported from Germany, by specified product and by quarter, January 1989-June 1991¹

<u>Period</u>	(Per pound)							
	<u>U.S. produced</u>		<u>Imported from Germany</u>					
	<u>"Super 2"</u>		<u>"Super 2"</u>		<u>"Super 3"</u>			
	<u>Product</u>	<u>Product</u>	<u>Product</u>	<u>Product</u>	<u>Product</u>	<u>Product</u>	<u>Product</u>	<u>Product</u>
1	2		1	2		1	2	
*	*	*	*	*	*	*	*	*

¹ The price data presented in this table were used to develop margins of under/overselling shown in table 18.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

